

# ***SCHOOL SAFETY/DISCIPLINE MANUAL***

## **SECTION III: HARASSMENT**

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### **III. HARASSMENT**

Despite the emphasis on school safety, harassment of students is one of the primary challenges facing educators today. Inappropriate and offensive behavior toward students, based on an individual's sex, race, religion, or disability, is prevalent in schools throughout the nation. Such conduct disrupts the educational process for a large percentage of students and, in some instances, deters students from even attending school.

Every school district has an affirmative obligation not only to discipline students who perpetrate such behavior but also to take appropriate steps to create a safe environment for all students. Combating harassment requires that the school district be proactive:

1. Adopt and enforce a strong anti-harassment policy;
2. Get the message out!! Educate the staff, students, and parents as to district's harassment policy and acceptable behavior expectations;
3. Publicize the policy and the complaint reporting process;
4. Create an environment where students know that harassment is not tolerated by the school district;
5. Respond immediately to allegations of harassment;
6. Diligently investigate allegations of harassment and/or retaliation;
7. Take appropriate disciplinary action when harassment occurs; and
8. Ensure the use of non-biased curricula, assessment, and instructional strategies.

#### **A. SEXUAL HARASSMENT**

Title IX of the Education Amendments of 1972 prohibits discrimination in public schools on the basis of sex. "No person in the United States, shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

Title IX protects students from unlawful sexual harassment in all school programs or activities, wherever they take place: at the school facilities, on a school bus, at a school sponsored activity at another location, or elsewhere.

Title IX protects both male and female students from sexual harassment, whether the harasser is male or female, and whether the harasser is another student, staff member, or visitor at the school. Further, harassing conduct of a sexual nature is prohibited by Title IX, regardless of

the gender or sexual orientation of the involved persons.<sup>1</sup> As a result, sexual harassment may be perpetrated by a male student against another male student, regardless of the sexual orientation of either individual.

Conduct which may be determined to constitute sexual harassment may involve behavior including, but not limited to, the following:

- Sexual advances, including kissing and intercourse, and/or attempts thereof
- Touching of a sexual nature
- Inappropriate flirting
- Graffiti of a sexual nature
- Rating another individual's physical appearance
- Displaying or distributing sexually explicit drawings, pictures or written materials
- Sexual gestures
- Sexual or "dirty" jokes
- Pressuring a student to provide sexual favors
- Grabbing or touching another individual, particularly in sexual areas of the body
- Touching oneself sexually or talking about one's sexual activity in front of others
- Stalking
- Spreading rumors about or rating other students as to sexual activity or performance.

### **Categories of Sexual Harassment**

Allegations of sexual harassment against a student are generally classified into two broad categories:

**Quid pro quo** harassment involves incidents in which a staff member causes a student to believe that he or she must submit to unwelcome sexual conduct to participate, and/or succeed, in a school program or activity.<sup>2</sup>

**Hostile environment** harassment involves unwelcome sexually harassing conduct that is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening or abusive educational environment. Generally, sexual harassment by a fellow student falls within the hostile environment category.

To properly evaluate allegations of sexual harassment, whether "quid pro quo" or "hostile environment," school officials must understand the following definitions:

"Unwelcome sexual conduct" is behavior that the student does not request or invite, and views as offensive or undesirable. However, the individual's belief that the behavior is offensive or undesirable must be reasonable in the circumstances. The behavior must be objectively offensive. In other words, when determining whether the particular conduct is

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<sup>1</sup> "Sexual Harassment Guidance: Harassment of Student by School Employees, Other Students, or Third Parties," Federal Register, U.S. Department of Education, OCR, March 13, 1997.

<sup>2</sup> As this manual is intended to address issues of peer harassment, quid pro quo will not be discussed in any detail.

unwelcome, an investigator must not only ascertain that the harassment was offensive to the individual, but also that the victim's response is reasonable.

"Severe, persistent, or pervasive." Generally, a sexually hostile environment involves a pattern of behavior that, when taken as a whole, constitutes harassment. The district will be required to look at the incidents in their entirety to determine whether or not harassment has occurred. On the other hand, while isolated incidents generally do not, in and of themselves, constitute a sexually hostile environment, they may be determined to do so depending on the severity of the behavior.

### **Factors to Consider When Assessing Allegations of a Hostile Environment**

Although many students, particularly in secondary schools, engage in a wide variety of behavior which has sexual overtones, their behavior is generally not sexual harassment. In some cases, even if such behavior is offensive to staff or other students, or violates a district policy or the code of conduct, it may not constitute sexual harassment. Essentially, such behavior may not meet the threshold definition of "unwelcome sexual behavior" and/or may not be sufficiently "severe, persistent, or pervasive" in nature. If either of these elements is missing, the behavior does not fall within the definition of sexual harassment.

However, at any time a student reports that he/she believes sexual harassment has occurred, the district has an obligation to investigate. School officials are responsible for providing a safe environment for all students and cannot ignore such allegations. Having knowledge of an allegation but failing to take reasonable steps in response may serve as a basis for finding the school district is liable for future harassment.

Determining that sexual conduct has created a sexually hostile environment involves considering numerous factors, including the following:

Did the complaining student invite or welcome the behavior?

If not, did the student view the behavior as offensive? Was the student's perception that the behavior is offensive reasonable? Is the behavior objectively offensive?

How has the conduct impacted the student and, particularly, his/her ability to participate and/or succeed in the educational program or activity?

Consider the following circumstances, among others:

- Nature of the conduct;
- Frequency at which the conduct occurred;
- Period of time during which the conduct continued;
- Age of the victim;
- Whether the alleged harasser was in a position of power over the student subjected to the conduct;
- Number of alleged harasser(s);
- Age of alleged harasser(s);

- Where conduct occurred;
- Other incidents of sexual harassment at the school involving the same or other students; and
- Adverse impact on the student's education or educational environment

In the event that the school district determines that the behavior was offensive and unwelcome, and sufficiently severe, persistent, or pervasive as to create a hostile environment for the victim, the school district must take action against the perpetrator.

## **B. RACIAL HARASSMENT**

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin in programs or activities receiving federal financial assistance, including public schools. It also prohibits retaliation against individuals who file discrimination charges or those who advocate on behalf of an individual.

Race discrimination may include such diverse incidents as racial harassment, school segregation based on race, and/or denial of language services to LEP students as a result of national origin. Generally, racial harassment is categorized as follows:

**Different Treatment** involves unwanted behavior based on a student's race, color, or national origin that is sufficiently severe so as to interfere with or limit the individual's ability to participate in or benefit from services, activities, or privileges;

**Hostile Environment** involves behavior based on race, color or national origin that is unwelcome, repeated, and causes harm, and which has the purpose or effect of creating an intimidating, hostile/offensive working or learning environment. Relative to racial harassment, OCR has concluded that a "[r]acially hostile environment may be created by oral, written, graphic or physical conduct related to an individual's race, color, or national origin that is sufficiently severe, persistent or pervasive so as to interfere with or limit the ability of an individual to participate in or benefit from the recipient's programs or activities."<sup>3</sup> Such behavior may include, but is not limited to the following:

- Intimidation and implied/overt threats of physical violence;
- Physical acts of aggression or assault, or damage to property;
- Demeaning racial jokes, taunting, racial slurs, derogatory racial nicknames, racial innuendos;
- Graffiti, slogans, or visual displays, cartoons, posters depicting racial/ethnic slurs or racial/ethnic sentiments;
- Criminal offenses directed at people because of their race or national origin;

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<sup>3</sup>; *Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance*; Department of Education Office for Civil Rights; Federal Register Vol. 59, No. 47, (March 10, 1994)

- Use of language and symbols of ethnic hate such as swastikas and burning crosses, racial and ethnic slurs; and
- Harassment of an individual because he/she associates with people of a particular race or national origin.

## **C. DISABILITY HARASSMENT**

Section 504 of the Rehabilitation Act of 1973 prohibits any recipient of federal funds from discriminating against individuals with disabilities, including all public school districts.

Section 504 is an anti-discrimination statute which does not confer any special rights on disabled persons beyond the right to be free from discrimination based *solely* on disability. *Pottgen v. Missouri State High Sch. Activities Assn*, 40 F.3d 926 (8th Cir. 1994) (Emphasis added).

“Disability harassment under Section 504 and Title II [ADA] is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student’s participation in or receipt of benefits, services or opportunities in the institution’s program.” Joint letter issued by OCR and OSERS, dated July 25, 2000.

Disability harassment constitutes disability discrimination and is prohibited in public schools. Such harassment manifests itself in many forms and may include such behavior as imitating or making fun of a student’s disabling condition, such as speech patterns or ambulation. It may also take the form of preying on students with a mental disability by encouraging the individual to engage in inappropriate conduct.

Protection is extended to those individuals who are determined to be eligible for protection under Section 504 and/or the ADA. As a result, the student’s condition must meet the definition of a “disability.” A “disability” is a “physical or mental impairment that *substantially limits* one or more of the major life activities of an individual.” In addition, those individuals with a history of a disability or who are perceived to be disabled, even though they are not, are protected.<sup>4</sup>

## **D. RETALIATION**

Retaliation is prohibited by federal and state anti-discrimination laws and the school district has a legal obligation to guard against retaliatory behavior related to allegations of sexual, racial, and/or disability harassment. The victim who files a claim of harassment, the victim’s advocate, and all other individuals involved in the investigation process, including witnesses and investigators, are protected from retaliation either by the school or its agents, or the perpetrator of the harassment or anyone acting on his or her behalf.

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<sup>4</sup> 34 C.F.R. 104.3(j).

Retaliation may involve punitive or other adverse actions. As with allegations of harassment, the school district has a responsibility to investigate and discipline any individual who is found to have engaged in unlawful retaliation.

## **E. INVESTIGATING ALLEGATIONS OF HARASSMENT**

The school district has an obligation to initiate an investigation of any allegations of harassment as soon as practicable after receiving notice of the allegation. It is not necessary that such notice be in writing. Rather, any allegations, whether verbal or written, that can reasonably be categorized as harassing in nature, should be investigated immediately.

When an allegation is received, the administrator must first determine whether any interim steps should be taken:

- Determine the nature of the allegations. Require that the victim make a written statement;
- Determine whether the victim requires any immediate assistance;
- Contact the victim's parents;
- Contact law enforcement, if appropriate. Many acts of harassment may involve criminal activity;
- Contact the alleged perpetrator(s) to determine their response to the allegations;
- Determine whether the students need to be separated;
- Determine whether the alleged perpetrator(s) should be suspended pending the outcome of the investigation. If suspension is deemed appropriate, the student must be given rudimentary due process prior to the suspension; and
- Determine the identity of any witnesses.

### **Investigation**

One of the key requirements is that the school district must investigate allegations of harassment. The investigation should begin immediately, unless the matter has been referred to law enforcement and it is conducting a criminal investigation. To avoid interfering with that investigation, and/or tainting it in some manner, the school district should delay an investigation until law enforcement has concluded its investigation.

Selecting an individual to investigate the allegations is important. The individual should be neutral and have no personal relationship with any students that could be viewed as creating bias. The individual must also be able to begin the investigation quickly and have the skills necessary to effectively interview the parties and witnesses. Additionally, the investigator

must have sufficient knowledge of anti-harassment to reach a conclusion as to whether or not the allegations constitute harassment.

Students who are parties to the allegations or witnesses to specific conduct should be interviewed separately in a non-threatening environment. They should be informed that the investigation is confidential in nature and they are expected to not discuss the investigation. Additionally, the investigator should inform them of the prohibition against retaliation. The investigator, after considering the age and development of the student and the nature of the allegations, may determine that it is appropriate to allow the student's parent to be present during the interview, but such determination is on a case-by-case basis.

The investigation report must be in writing and kept by the district administration regardless of the outcome of the investigation. The written report must document the nature of the allegations, the individuals interviewed, and a summary of the information gleaned from each interviewee. The report must also state whether or not the facts support a conclusion that harassment occurred.

Historically, school districts have destroyed investigation reports and/or do not have a standard method of compiling them. All investigation reports of allegations of harassment, regardless of the outcome, should be stored in an accessible manner. In addition to supporting any disciplinary action, the investigation report should be on file to document that the school district responded appropriately to the allegation.

### **Corrective Measures**

Upon reviewing the investigation report, the administrator must determine whether disciplinary action is necessary. If disciplinary action is taken, the student is entitled to due process as set forth in Idaho Code §33-205. *See* Section 5, General Disciplinary Procedures.

Additionally, other corrective measures may be appropriate. For example, educational programs addressing anti-harassment issues may be necessary when there appears to be a tolerance for harassing behavior among the students.

## **F. RESPONSIBILITIES OF THE SCHOOL DISTRICT**

The school district has a responsibility to take reasonable steps to protect all students from harassment:

**Policy Development.** Develop policies in compliance with federal and state mandates. As necessary, the policies should set forth the categories or types of prohibited behavior so that students are put on notice as to what constitutes harassment.

"Not all prohibited acts of harassment can be described even in a comprehensive sexual harassment policy. "

**Notice of Policies.** Publish the policies in both the staff and student handbooks. If necessary, publish a summary of the policies, using age-appropriate language.



**Curriculum.** Incorporate anti-discrimination and anti-harassment training in the curriculum, as appropriate for the students' age and maturity.

**Student Training.** Educate students as to the terms of the policies and the expected behaviors. Simply prohibiting the inappropriate behaviors is not sufficient to create a safe environment for students. The district must actively teach students what constitutes harassment and that the district's expectations are regarding acceptable behavior. Additionally, students must be taught that they have the right to not be harassed. Students must be educated to report allegations and seek intervention as necessary for the safety of themselves and others.

**Staff Training.** Educate all staff members as to what constitutes harassment and the district's policy prohibiting such behavior.

**Title IX Coordinator.** Appoint an employee to coordinate efforts to comply with Title IX. Provide training for the Title IX coordinator.

**Complaint Process.** Develop a process for students to file complaints of harassment; the process should be age-appropriate and accessible. Notify students of the process that is in place in their school.

**Intervention.** Require staff members to intervene, as appropriate, when conduct reasonably appears to constitute harassment. Provide appropriate training to staff so they can effectively intervene. Require staff members to document the incident.

**Reporting.** Require that staff members report to a building administrator any conduct which they reasonably believe to involve harassment, and, if appropriate, direct the student(s) to an administrator. Require staff members to document the report.

**Immediate Response.** Take interim steps as necessary when allegations of harassment occur (report allegations to law enforcement, separate students, etc.).

**Investigation.** Respond to all reports of harassment. This is a legal obligation for the school district. Conduct an investigation of the allegations, regardless of their nature, in a timely manner.

**Corrective Measures.** Take appropriate corrective measures, including disciplinary action when appropriate.

**Prohibit Retaliation.** Prohibit retaliation and investigate such allegations as appropriate.

**Notice of Grievance Rights.** Notify individuals of their right to file a grievance with the school district, as well as with Office for Civil Rights and the Idaho Human Rights Commission.

## G. LIABILITY ISSUES

School districts may incur liability for incidents of harassment occurring in the schools. In particular, numerous appellate courts, including the United States Supreme Court, have addressed issues of sexual harassment in the schools. As a result, there exists a body of case law that provides districts with guidance on how to interpret and implement the relevant anti-harassment requirements in the school setting.

**Sexual Harassment.** A school district may be held liable when one student sexually harasses another if the district knew of the harassing behavior, the harassment was so severe as to deprive the victim of access to educational opportunities, and the school official(s) acted in a manner exhibiting “deliberate indifference” to the victim’s plight.

In *Davis v. Monroe County Board of Education*, 119 S. Ct. 1661 (1999), LaShonda Davis was a 5<sup>th</sup> grade student. In December of that year, a male classmate (M.J.) tried to touch LaShonda’s breasts and vaginal area. He also made numerous inappropriate statements, including, “I want to get in bed with you,” and “I want to feel your boobs.” LaShonda complained to her teacher. M.J. continued to engage in similar behavior in January, and she again complained to the teacher.

In February, M.J. placed a doorstop in his pants and behaved in a sexually suggestive manner toward LaShonda during PE class. She again reported his conduct to the teacher. When further misbehavior occurred, she reported each incident. In April, LaShonda was finally allowed to change seats but the behavior continued, including an incident in which M.J. rubbed his body against LaShonda in a sexually suggestive manner. When LaShonda and her mother subsequently spoke with the principal, he was dismissive, stating that he would need to talk to M.J. again.

The case ultimately was heard before the United States Supreme Court. In awarding damages to LaShonda, the court found that the school district had knowledge of the harassment and failed to take appropriate action. Further, the court set the standard for when misconduct in the school setting rises to the level of sexual harassment:

It is understandable that, in the school setting, students often engage in insults, banter, teasing, shoving, pushing, and gender-specific conduct that is upsetting. Damages are not available for simple acts of teasing and name-calling...damages are available only where the behavior is so severe, pervasive, and objectively offensive that it denies its victims the equal access to education that Title IX is designed to protect.

In *Ray v. Antioch Unified School District*, 107 F. Supp. 2d 1165 (N.D. Cal. 2000), the federal district court for the northern district of California held in favor of a male student who had alleged that students assaulted and harassed him based on their perception that he was gay. The court held that the student could bring a lawsuit against the school district under Title IX.

[T]he court finds no material difference between the instance in which a female student is subject to unwelcome sexual comments and advances due to her harasser’s perception that she is a sexual object, and the instance in which a male student is insulted and abused due to his harasser’s perception that he is homosexual, and

therefore a subject of prey. In both instances, the conduct is a heinous response to the harasser's perception of the victim's sexuality, and is not distinguishable to this court. 107 F. Supp. 2d at 1170.

Denying the school district's motion for summary judgment, the *Ray* court held that the student had a right to proceed to trial. The standard set forth in *Davis* was applicable: the student must demonstrate that the sexual harassment was so severe, pervasive, and objectively offensive that it deprived him of access to educational opportunities or benefits and the school official with authority to redress the issue had knowledge and acted with "deliberate indifference."

## **H. CHECKLIST WHEN ALLEGATIONS OF HARASSMENT OCCUR**

- Refer the individual to an appropriate administrator or designee.
- Request that the victim write a summary of the allegations.
- Contact the victim's parent(s)/guardian(s) to advise them that an allegation has been made and the school is addressing it.
- Contact the alleged perpetrator and ask for a written response to the allegations.
- Determine whether the actions of the alleged perpetrator may be criminal in nature; if so, refer the allegations to law enforcement.
- If witnesses are identified, request that they give a written statement.
- Review the allegations to determine the complexity of the investigation and whether the alleged perpetrator needs to be suspended pending the outcome of the investigation.
- Prior to suspending the student, provide rudimentary due process.
- Select an individual to conduct the investigation. If law enforcement is conducting an investigation, delay the school's investigation until it is completed.
- Make witnesses (students and staff) available for interviews.
- Review investigation report and take appropriate disciplinary action, affording due process. Take other corrective measures, if appropriate.
- Inform all parties and witnesses of the prohibition against retaliation.

## **I. SAMPLE POLICIES**

*Student Harassment, Policy No. 506*

## **J. SCENARIOS**

*It is the policy of this district to maintain a learning environment that is free from harassment. Each student has the right to attend school in an atmosphere that promotes equal opportunities and that is free from all forms of discrimination and conduct that can be considered harassing, coercive, or disruptive.*

*Students attending district schools are:*

- 1. Prohibited from engaging in any conduct which could reasonably be construed as constituting harassment on the basis of sex, race, color, national origin, age, religious beliefs, ethnic background, or disability;*
- 2. Prohibited from sexually harassing other students; and*
- 3. Required to report, to the school principal or designee, harassment of which the student becomes aware.*

*This policy applies to all conduct on the district's premises and at school-sponsored events, conduct during transportation to and from school and school-sponsored events, and to conduct off the district's premises that has an adverse affect upon a student's educational environment.*

## **DEFINITION OF HARASSMENT**

Harassment is defined to include verbal, written, graphic, or physical conduct relating to an individual's sex, race, color, national origin, age, religious beliefs, ethnic background, or disability that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the district's programs that:

1. Has the purpose or effect of creating an intimidating or hostile environment.
2. Unreasonably interferes with an individual's educational performance.
3. Otherwise adversely affects an individual's educational opportunities.

Harassment includes, but is not limited to:

1. Physical acts of aggression or assault, damage to property, or intimidation and implied or overt threats of violence motivated by the victim's sex, race, color, national origin, age, religious beliefs, ethnic background, or disability;

2. Demeaning jokes, taunting, slurs, and derogatory “nicknames,” innuendos, or other negative remarks relating to the victim’s sex, race, color, national origin, age, religious beliefs, ethnic background, or disability;
3. Graffiti and/or slogans or visual displays such as cartoons or posters depicting slurs or derogatory sentiments related to the victim’s sex, race, color, national origin, age, religious beliefs, ethnic background, or disability; and
4. Criminal offenses directed at persons because of their sex, race, color, national origin, age, religious beliefs, ethnic background, or disability;

Harassment also includes an act of retaliation taken against (1) any person bringing a complaint of harassment, (2) any person assisting another person in bringing a complaint of harassment, or (3) any person participating in an investigation of an act of harassment.

### DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is a form of misconduct that undermines the student’s relationship with educators and with other students. No student, male or female, should be subject to unasked for and unwelcome sexual overtures or conduct, either verbal or physical. Sexual harassment refers to sexual overtures or conduct that is unwelcome, personally offensive, and affecting morale, thereby interfering with a student’s ability to study or participate in school activities.

Sexual harassment is a form of misconduct that includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct of a sexual nature when:

Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s participation in the educational process;

Submission to or rejection of such conduct by an individual is used as a factor for educational decisions affecting the individual; or

Such conduct has the purpose or effect of unreasonably interfering with an individual’s education, or creating an intimidating, hostile, or offensive educational environment.

*Examples of sexual harassment include, but are not limited to, the following:*

1. *Unwelcome verbal statements of a sexual or abusive nature, including requests or demands for sexual activity, sexual jokes, and obscene comments, etc.;*
2. *Unwelcome, sexually motivated or inappropriate touching, pinching, or other physical contact;*

3. *Unwelcome sexual behavior or communications, accompanied by implied or overt threats concerning an individual's education;*
4. *Unwelcome behavior or communications directed at an individual because of his/her gender; and*
5. *Stalking or unwelcome, sexually motivated attention.*

### **REPORTING PROCEDURES**

1. *Any student, and/or parents of a student, who believe the student is being harassed should immediately report the situation to school personnel.*
2. *Any district employee who receives a report of harassment from a student, becomes aware that a student is being subjected to harassment, or in good faith believes that a student is being subjected to harassment, is required to report the matter to the building principal immediately. In the event the complaint involves the principal, the matter must be immediately reported to the superintendent.*
3. *Any district employee who witnesses harassment of a student should take immediate, appropriate action to intervene to stop the harassment.*
4. *Any student who becomes aware that a fellow student is being subjected to harassment should immediately report the incident to a counselor, teacher, or the principal.*

### **INVESTIGATION AND REPORT**

#### ***[Option A—the board must choose either Option A or Option B.]***

*When a report of harassment is received by the principal or the superintendent, immediate steps will be taken to follow the policy entitled "Civil Rights Grievance Procedure," Policy No. \_\_\_\_ (294).*

#### ***[Option B—the board must choose either Option A or Option B.]***

*When a report of harassment is received by the principal or the superintendent, immediate steps will be taken to do the following:*

1. *Obtain a written statement from the complainant regarding the allegations;*
2. *Obtain a written statement from the accused;*
3. *Obtain written statements from witnesses, if any; and*

4. *Prepare a written report detailing the investigation.*

*An investigator may be appointed to conduct the investigation, or the principal or superintendent may conduct the investigation. The investigation should be completed within ten (10) workdays.*

### **DISCIPLINARY ACTION**

*If the allegation of harassment involves a teacher or other school employee, the principal will submit the report of the investigation to the superintendent. If there is sufficient evidence to support the allegation, disciplinary action, up to and including dismissal, may be taken against the offender.*

*If the allegation of harassment is against a student and there is sufficient evidence to support the allegation, disciplinary action, up to and including expulsion, may be taken against the offender.*

*If there is insufficient evidence to support the allegation, no record will be made of the allegation in the complaining student's permanent record. No record of the allegation will be placed in the accused employee's personnel record or in an accused student's permanent record if insufficient evidence supports the allegation.*

*In the event the investigation discloses that the complaining student has falsely accused another individual of harassment knowingly or in a malicious manner, the complaining student may be subject to disciplinary action, up to and including expulsion.*

*In the event the harassment involves violent or other conduct which could be reasonably considered to be criminal in nature, the principal/superintendent will refer the matter to the local law enforcement agency.*

### **PROTECTION AGAINST RETALIATION**

No retaliation will be taken by this district or by any of its employees or students against a student who reports harassment in good faith. Any person found to have retaliated against another individual for reporting an incident of harassment may be subject to the same disciplinary action provided for harassment offenders. Those persons who assist or participate in an investigation of harassment are also protected from retaliation under this policy.

### **CONFIDENTIALITY**

Any investigation will be conducted, to the maximum extent possible, in a manner that protects the privacy of both the complainant and the accused. However, if it is suspected that child abuse has occurred, such abuse will be reported to the proper authorities as required by state law.

**RECORD OF ALLEGATIONS**

This district will keep and maintain a written record, including, but not limited to, witness statements, investigative reports, and correspondence, from the date any allegation of harassment is reported to district personnel. The information in the written record will also include the action taken by the district in response to each allegation. The written record will be kept in the district's administrative offices and will not, at any time, be purged by district personnel.

**LEGAL REFERENCE:**

Idaho Code Section 16-1619

Title IX of the Education Amendments of 1972

*Franklin v. Gwinnett Co. Public Schools*, 112 S. Ct. 1028 (1992)

*Gebser v. Lago Vista Independent School District*, 118 S. Ct. 1989 (1998)

*Davis v. Monroe County Board of Education*, 119 S. Ct. 1661 (1999)

**ADOPTED:****AMENDED:**

*\*Language in text set forth in italics is optional.*



**J. SCENARIO A. DISABILITY HARASSMENT/WEAPON/SEXUAL HARASSMENT**

The building principal is contacted by a male student who says that Tom is in the school restroom with his cell phone and is taking inappropriate pictures of boys using the restroom, including one classmate who is in a wheelchair.

The principal calls Tom to the office, asks to see his cell phone, and checks to see if there are pictures that have been taken in the bathroom. There are pictures that were taken in the bathroom, including a picture of other boys who appear to be harassing, gesturing at, and laughing at the boy who is in a wheelchair. In reviewing the pictures taken in the school bathroom, the principal also sees pictures of Tom wearing gang attire and holding a gun.

**QUESTIONS:**

- What are the issues that the principal needs to address?
- Was the principal's review of the pictures on the cell phone a "search"?
- Did the principal have reasonable cause to look for the pictures? Which pictures? Did the principal have reasonable cause to look at all of the pictures on the cell phone?
- What can the principal do, if anything, about the pictures that were not taken on school premises?
- What actions should the principal take?
- What punishment would you recommend, if any, for Tom?
- Should the principal take some action regarding the apparent harassing behavior toward the boy in the wheelchair? If so, what action?

**RESPONSES TO QUESTIONS:**

- **What are the issues that the principal needs to address?**

Administration should address the inappropriate use of a camera invading the privacy of students and also determine if there is harassment of a fellow student due to the student's disability. Such harassment may be discriminatory as well. Review district policies to determine if there is a specific prohibition regarding such use of cell phones/cameras in the school setting. If there is no specific policy, determine whether the district has a more general policy regarding the safety and security of the school climate that can be applied to this intrusion on privacy of the individual student.

- **Was the principal's review of the pictures on the cell phone a "search"?**

Review of the pictures on the cell phone is a search for which the administrator has reasonable suspicion, based upon the information received from a credible student.

- **Did the principal have reasonable cause to look for the pictures? Which pictures? Did the principal have reasonable cause to look at all of the pictures on the cell phone?**

In the course of that search, the administrator may look at all picture images to determine if there are additional pictures that were taken invading student privacy on school premises or documenting actions that could constitute harassment or discrimination. The review of the cell phone pictures by the principal was within the appropriate scope and content of the search.

- **What can the principal do, if anything, about the pictures that were not taken on school premises?**

Pictures that depict persons, gang attire, or weapons not on school premises are generally not covered by school policy, but bringing these images onto school premises submits the pictures to review and falls within the provisions of school policy. The pictures may have depicted a violation of policy limitations placed on gang attire, pictures or depictions of images that are disruptive to the school process, or prohibitions relating to disruption of the educational process.

- **What actions should the principal take?**

An investigation into all the circumstances is required.

- **What punishment would you recommend, if any, for Tom?**

The investigation must be completed to determine what policies have been violated and what disciplines would be appropriate.

- **Should the principal take some action regarding the apparent harassing behavior toward the boy in the wheelchair? If so, what action?**

Upon completion of the investigation, it may be determined that there was harassment of the student who was in the wheelchair. Investigation may determine that additional students besides Tom were involved in inappropriate behavior.

All information found may be discussed with parents and with law enforcement. There is no confidentiality limitation relating to information that the administrator discovers in a search.

## **SCENARIO B:      SEXUAL/DISABILITY HARASSMENT**

Janie is a 13-year-old student with cerebral palsy who is wheelchair bound and has difficulties with articulation. She is in regular classrooms for a portion of the day and is in a special education classroom for a portion of the day. She is a bright student with a good sense of humor.

In the special education classroom, treats are used as rewards for students, including Janie. For Valentine's Day the treats were candy kisses. When Janie earned her treat, the aide placed it on her chest. The other students in the classroom laughed and Janie became embarrassed.

### **QUESTIONS:**

- Was this action by the aide inappropriate? If so, why?
- Janie's parents are really upset, and are threatening to sue the school and to remove Janie from school because of this treatment. Do they have a case?
- What should the school administration do?
- Should the school administration tell the parents and Janie to "get over it, it isn't a big deal, it was just a piece of candy, after all"?

### **RESPONSES TO QUESTIONS:**

- **Was this action by the aide inappropriate? If so, why?**

Does this action by the paraprofessional create an intimidating, threatening, or abusive educational environment? Was the action likely to substantially or unreasonably interfere with the student's academic performance? Was Janie's educational opportunity adversely affected? Was this action of a sexual or abusive nature?

This action by the paraprofessional is inappropriate if it subjected the student with a disability to unwelcome attention, humiliation, or comment. Janie's parents certainly have the right to have this incident investigated and to be assured that there will be no recurrence of this or similar behavior.

- **Janie's parents are really upset, and are threatening to sue the school and to remove Janie from school because of this treatment. Do they have a case?**

Janie's parents may well have a case. As you answer the additional questions in this scenario, determine if the basic elements of disability or sexual harassment discussed in the chapter are found. An investigation is necessary to fully determine the facts in this situation.

- **What should the school administration do?**

Disciplinary action up to and including termination of the paraprofessional may be appropriate, or, alternatively, training and monitoring or supervision.

- **Should the school administration tell the parents and Janie to “get over it, it isn’t a big deal, it was just a piece of candy, after all”?**

As you can imagine, minimizing the situation will not be helpful. It is important to make the effort to actively listen and to try to understand the situation as perceived by the student and the student’s parents. Denying that the student could be negatively impacted could be interpreted by a court or the Office of Civil Rights as willfully disregarding the obligation of the school to provide a safe learning environment for students.

Students as well as school personnel should receive training regarding disability discrimination and harassment, and should be made aware of the district’s policy addressing disability harassment and discrimination.

## **SCENARIO C:      SEXUAL HARASSMENT—GAY/LESBIAN**

In the high school, it is common to hear students calling each other “gay.” It even sounds like it means something to them other than that the student is homosexual. Not everyone thinks it is cool to be called gay, but other students don’t seem to care.

John and Claire do care. John is made a target by other boys at school. He is called “faggot” and “gay” by a group of boys. In P.E. he is afraid to shower and tries to get to class early so that he can dress before the other boys get there. John tries to avoid all physical contact with any of the boys. The boys have grabbed him and simulated anal sex with him. The boys then laugh and run away. One of the boys, Jim, a member of the basketball team, seems to always need to show off by grabbing John, pulling John’s gym shorts down, and poking John in the rectum. John feels embarrassed and humiliated.

John gathers his courage and, at the end of the class, tells the teacher, who is also the coach for the basketball team. John tells the coach what has happened. The coach seems troubled, but says, “Grow up, the boys are just horsing around. Be a man, it doesn’t mean anything. The semester is almost over. You can tough it out, can’t you?”

John doesn’t want to return to the class. He feels he has been violated and that he cannot tolerate this any longer.

Claire has been teased about being gay for two years at school. Students she doesn’t know have put pornographic pictures inside her locker. She has taken these to a teacher. Obscene words have been scratched on the outside of her locker. She has reported this to the principal and, after a number of weeks, the words have been painted over but they are still legible. A picture of a naked woman in an obscene position is again placed in her locker with a note saying “Get out of our school or die.” Claire is frightened, and immediately takes the picture and note to the office to show to the principal. The principal is on his way to a meeting and brushes her off, saying, “I will talk with you later about this but, if you’re not gay, why are you crying?” He rushes to his meeting.

### **QUESTIONS:**

- Is John being harassed? If he is, the coach should take what steps?
- Is Claire being harassed? Does it matter if the students putting pictures in her locker are girls, or if they are boys?
- Should law enforcement be notified in these cases? Why?
- What should the principal do with the pictures and note from Claire’s locker?
- Who can conduct an investigation in each of these situations?
- Should the parent(s)/guardian(s) of Claire and John be notified by the school that these things have happened?

- Should the parents of the boy who is identified by John be notified of the allegation? If so, who should do this?

### **RESPONSES TO QUESTIONS:**

- **Is John being harassed? If he is, the coach should take what steps?**

From the discussion above, it appears that John is being sexually harassed. Sexual harassment can include words or actions by persons of the same sex. The coach has an obligation under the district policy immediately to report the incident to administration and fully cooperate in investigation into John's allegations. The coach should also consider whether there is adequate supervision of the boys' activities in the locker room and shower area. He needs to consider if additional training and education regarding harassment should be provided to the students in addition to recommendations for disciplinary action regarding any boys who are involved in the alleged harassment.

- **Is Claire being harassed? Does it matter if the students putting pictures in her locker are girls, or if they are boys?**

Yes, Claire is also being harassed if the facts presented are accurate when investigated by an objective person. It does not matter if the actors responsible for this behavior are girls or boys; under Title IX, sexual harassment can be committed by persons of the same sex. Protection must be provided to protect persons who are gay or lesbian from such harassment.

- **Should law enforcement be notified in these cases? Why?**

Yes. Law enforcement should be immediately notified, as there has been a threat against a student. Making such a threat may be a crime.

- **What should the principal do with the pictures and note from Claire's locker?**

It would be best for the principal not to remove the picture and note from the locker, but, if he has done so, the principal should retain the picture and the note from the locker and deliver them to law enforcement for the criminal investigation.

- **Who can conduct an investigation in each of these situations?**

An objective person should be appointed to conduct the investigations. Law enforcement may be the chief investigators in the situation involving Claire, as well as John's incident. If there is a separate investigator for each situation, the two investigators may wish to talk with each other regarding related issues or issues that occur in common in the two situations.

- **Should the parents of Claire and John be notified by the school that these things have happened?**

Yes, the parents should be notified of the allegations and the procedures that will be followed by the school to investigate the incidents.

- **Should the parents of the boy who is identified by John be notified of the allegation? If so, who should do this?**

As there may be a violation of the law, the school should defer to law enforcement for the initial investigation. Law enforcement will make initial decisions regarding the investigation and determine contact with the wrongdoers' parents. If there is disciplinary action, the school must notify the parents.

These situations must be investigated under the requirements of Title IX addressing potential sexual harassment. The school district has an obligation to provide training to personnel and students regarding sexual harassment, and take an active role in the investigation and prevention of recurrence of such harassment.

Parents need to be notified of such allegations and should be allowed to participate in interviews of students if the student wishes.

Please review the definitions of harassment and sexual harassment in the chapter.

Actions need to be taken to respond appropriately to what sounds like sexual harassment and bullying. The actions must not only address the behaviors that have already taken place, but also prevent recurrence of these or similar inappropriate behaviors.

Policies are required to be in place, and notice/training about those policies must be provided to staff. Students should also be given notice of these policies, and provided information on how to make a complaint and who to contact. Remedial training and consultation should also be available to assist administration, employees, and students. Schools are obligated to respond to reports, to investigate, and to prevent recurrence.

## **SCENARIO D: SEXUAL ISSUES**

Angie and her boyfriend attend the same high school and recently broke up. The boyfriend is now calling her she is a “slut,” a “bitch,” and other names, and telling classmates she isn’t good for anything except sex. Angie complained to a teacher, but the harassment continued and even escalated. The boyfriend then posted pictures of Angie in compromising situations and implied that Angie would engage in oral sex for money. Angie was embarrassed and went home. She tells her mother that she refuses to return to school and tells her what has been happening. Angie’s mother contacts the principal, and complains about the harassment and that the school has done nothing to protect her daughter.

### **QUESTIONS:**

- What should the administration do? What are the obligations to intervene, if any?
- What information should be placed in Angie’s educational record, if anything?
- What should happen regarding her ex-boyfriend? What information should be placed in his educational record? Would this information be transferred if he moves and is enrolled in another school district?

### **RESPONSES TO QUESTIONS:**

- **What should the administration do? What are the obligations to intervene, if any?**

The administration has a responsibility to investigate these allegations and to prevent further actions. Additionally, it is important that any type of retaliation by the harasser be prevented. Training of students, as well as staff, and making persons aware of the prohibition against harassment is essential. The investigator should determine if the facts meet the criteria for sexual harassment or bullying, or both, as outlined in this manual.

- **What information should be placed in Angie’s educational record, if anything?**

While Angie has the right to know that the incident she complained of is investigated, if there is disciplinary action or counseling required, it is less clear from guidance from OCR what information should be made part of her educational record. It does not appear that the report of investigation is about Angie and may not even contain her name; therefore, the report need not be placed in her educational record. However, if Angie’s educational programming is affected as a result of these incidents, that information should be in her educational record.

- **What should happen regarding her ex-boyfriend? What information should be placed in his educational record? Would this information be transferred if he moves and is enrolled in another school district?**

The harasser may be disciplined. The report of investigation should be placed in his educational record. Disciplinary records must be transferred with the educational record of a student who transfers to a new school.



## **SCENARIO G:      HARASSMENT/ADMINISTRATOR-TEACHER**

Mrs. Smith is a first-year teacher in the school district in a small community. Although she is a new teacher, she knows nearly all the teachers and has known the principal for a number of years as a friend, fellow club member, and member of the community. She has a scheduled supervisory meeting with the principal on a regular basis, nearly weekly. Initially, these were meetings in her classroom but now he has asked that she come to his office for the meetings. She has begun to feel uncomfortable in these meetings because the door is shut and the principal has told her how nice she looks, talking about her hair and her clothes specifically. She doesn't like how this personal conversation makes her feel. At the end of the meetings the principal often puts his hands on her shoulder and sometimes gives her a quick hug. She doesn't say anything to him but has come to dread going to the meetings and begins to make excuses why she can't meet as scheduled, but she doesn't tell him she is made uncomfortable by his statements or by his touching her.

Mrs. Smith isn't sure if this is sexual harassment, so she talks with a fellow teacher, asking him to keep it confidential but she wants to know what he thinks. The fellow teacher just laughs, and says, "You don't need to worry about Ol' Jim, he's okay."

### **QUESTIONS:**

- Is this sexual harassment? Does it matter if the principal was unaware that Mrs. Smith was uncomfortable?
- Did the fellow teacher have any obligation to report the concern to a supervisor, even though Mrs. Smith has asked that the conversation be kept confidential?
- Does this situation need to be investigated?

### **RESPONSES TO QUESTIONS:**

- **Is this sexual harassment? Does it matter if the principal was unaware that Mrs. Smith was uncomfortable?**

Review the elements of sexual harassment. When there are allegations of sexual harassment, the reasonable person standard applies. If the "victim" is reasonable in her response of being uncomfortable, the actions of the principal may be sexual harassment if the effect of the behavior changes the victim's actions or participation in the work setting. The principal is responsible for his behavior whether or not Mrs. Smith tells him she is uncomfortable. His behavior is not likely to change unless there is some type of intervention, such as the reporting of this concern to the person who is appointed as the coordinator for the district.

- **Did the fellow teacher have any obligation to report the concern to a supervisor, even though Mrs. Smith has asked that the conversation be kept confidential?**

Even though the fellow teacher has been asked to keep this confidential, he has the responsibility to report these concerns to the coordinator to initiate an investigation. The fellow teacher does not have a responsibility to investigate the matter, but may share his personal view that the principal's actions are not worrisome. The investigator must collect all of the information to determine if there is harassment.

- **Does this situation need to be investigated?**

Yes. All allegations of harassment that are not without credibility as presented must be investigated to determine if there is merit to what is alleged.

## **SCENARIO H:      HARASSMENT/STUDENT-TEACHER**

Ms. Charles has been the school counselor for several years. She is active in many community activities but keeps her private life private, not sharing details with her peers. Female students seem to like her and gravitate toward her. One female student, Susan, seems to spend a lot of time in Ms. Charles' office and has begun to leave notes for Ms. Charles on her desk, as well as little gifts. Other students have begun to notice that Susan seems to be "attracted" to Ms. Charles and "talks about her all the time." Ms. Charles begins to notice that Susan is present at all the community activities that she participates in.

Ms. Charles does not want to hurt Susan's feelings, but feels this extra attention and "attachment" is not professional nor appropriate and she needs to limit it. She seeks your help as you are one of Susan's teachers in eighth grade.

### **QUESTIONS:**

- Do you think Ms. Charles should be concerned about Susan's actions?
- What would you suggest Ms. Charles do, if anything?
- Does it matter that Ms. Charles is a counselor, not a teacher who will be grading Susan's academic work?

### **RESPONSES TO QUESTIONS:**

- **Do you think Ms. Charles should be concerned about Susan's actions?**

Ms. Charles should be concerned and should attempt to establish limits to the relationship with Susan that are consistent with professional boundaries. Students may develop inappropriate and unrealistic expectations of relationships with significant professionals in their lives. Professionals should be alert to this potential, review the relevant ethical standards of their profession and licensure, if applicable, and utilize resources for consultation and direction. Other students may perceive this relationship results in favoritism to the student, as well as creating unwanted and unwarranted rumors that discredit all parties.

Students can harass adults and behave in a manner that is threatening to the adult. Prompt attention to these issues can curtail such activity. Such circumstances should be reported to supervisory/administrative personnel.

- **What would you suggest Ms. Charles do, if anything?**

Ms. Charles should discuss this situation with her immediate supervisor to determine the specific action to be taken. The district coordinator should be notified, as in all other cases of alleged harassment.

- **Does it matter that Ms. Charles is a counselor, not a teacher who will be grading Susan's academic work?**

No, any school employee could be subject to inappropriate behaviors.

## **SCENARIO I: HARASSMENT/TEACHER-STUDENT**

Mr. Green is a long-time history teacher in the school district, who often is also the coach for several girls' sports like volleyball. He likes having the additional social, as well as leadership, contact with the students, especially the girls who go out for sports. He has "a bit of a reputation" with students who think that girls who are attractive get better grades. Administration "hears" this but doesn't address the issue with Mr. Green. Girls in his class acknowledge they believe that if they wear short skirts or revealing blouses, they will receive better grades. Some of the girls say they want the higher grade, so they don't care. Other girls seem to be embarrassed when they receive "special attention" from Mr. Green. Two of the girls on the volleyball team have said they were uncomfortable when Mr. Green put his hand on their shoulders and "kind of massages their neck" after games. They decided they would not go out for the volleyball team next year, despite being the star players.

Mr. Green invites students for special activities such as taking them out to breakfast or to lunch with him. He gives some students, always girls, gifts for Valentine's Day and their birthdays. In a class addressing slavery, he asks a very attractive girl to stand on a chair, as if she were at a slave auction. She is embarrassed to be the center of attention but is humiliated when he says, "She is the kind of person who would really be worth a lot of money as a mistress to the master."

No one complains directly to the principal about Mr. Green, but there are lots of rumors that he is behaving inappropriately with students.

### **QUESTIONS:**

- Does the principal have an obligation to do anything about the rumors he is hearing, or is it just talk?
- If the student who was asked to stand on the chair complains, is that the extent of the complaint that should be investigated?
- Is this sexual harassment? Is a hostile environment created by the of Mr. Green?

### **RESPONSES TO QUESTIONS:**

- **Does the principal have an obligation to do anything about the rumors he is hearing, or is it just talk?**

Unwelcome touching or comments of a sexual nature may constitute sexual harassment. Students have the right to be free from such conduct that may create a hostile environment. One incident alone may be so significant and of such a serious nature to be sexual harassment. A pattern of behavior over a long period of time may also be sexual harassment. An investigation should be conducted covering all of the rumors and allegations. Rumors may be indicators that inappropriate conduct is occurring. Ignoring rumors may leave the school district in a situation where a court could later determine that there has been intentional indifference to the harassment.

If the behavior is established to be sexual harassment, disciplinary action up to and including termination may be appropriate. Behavior that is inappropriate due to the age, emotional development, and understanding of students may also require corrective action in the form of training, education, or counseling.

- **If the student who was asked to stand on the chair complains, is that the extent of the complaint that should be investigated?**

A thorough investigation should cover the rumors that are heard in the school by students and employees. While a single incident may be adequate to establish sexual harassment, a pattern of behavior may also create a hostile environment negatively impacting the learning environment.

- **Is this sexual harassment? Is a hostile environment created by Mr. Green?**

While this sounds like sexual harassment and a hostile environment, it is important to conduct a complete investigation prior to reaching conclusions in these matters.